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OFFICE OF PETITIONS

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Patent No. 7,521,451
Issued: April 21, 2009
Application No. 10/534,414
Filed: May 11, 2005
Dkt. No.: 074129-0521

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed on January 15, 2010, which is being treated as a petition under 37 CFR 1.181 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 764 days.

The petition was filed within two months of a decision by the Office mailed on December 15, 2009 dismissing applicant request for reconsideration of PTA under 37 CFR 1.705(d).

The application for patent term adjustment is **GRANTED TO THE EXTENT INDICATED HEREIN.**

As previously advised, the period of adjustment pursuant to 37 CFR 1.702(a)(1) is 427 days, not 442 days.

As previously acknowledged, the period of applicant delay is 23 days.

The period of "B" delay is 330 days, not 345 days, as argued by patentees. In an international application, the period of "B" delay is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See, 1.702(b). The priority date of this application is November 26, 2002. The requirements for early commencement were not met; accordingly, the national stage commenced in this application on May 26, 2005. Thus, "B" delay is 330 days, counting the number of days beginning on May 27, 2008 and ending on April 21, 2009, the date of issuance. See, 1.703(b).

In view thereof, the patent is entitled to an overall adjustment of 734 days ("A" delay of 427 days + 330 days of "B" delay – 23 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 734 days.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALEZIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,521,451 B2

DATED : April 21, 2009

DRAFT

INVENTOR(S) : Toyooka, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 404 days

Delete the phrase "by 404 days" and insert – by 734 days--